

U.S. Application Serial No. 10/603,279
Office Action Mailed May 1, 2007
Amendment in response filed on September 4, 2007

REMARKS

The Applicants thank the Examiner for the consideration shown the present application thus far. Claims 1, 3, 5, and 10-15 are still pending.

35 U.S.C. § 103 Rejection

Claims 1, 3, 5, and 10-15 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Elder, et al. The Applicants respectfully traverse this rejection, and respectfully request that the Examiner reconsider this rejection in light of the amendments made herein.

Relevant case law and MPEP provisions relating to a prima facie case of obviousness are not repeated here for the sake of brevity but can be found in prior Applicant responses and are equally applicable here.

With regard to this obviousness rejection, Applicants respectfully disagree with the Examiner and assert that Elder '054 does not teach or suggest Applicants' invention. Respectfully, Applicants call the Examiner's attention to the last response, which amended currently pending Claims 1 and 5. In that amendment, Claim 1 was amended to include, *inter alia*, "by hydrolyzing the amide group of the asparagine to form aspartic acid." A similar amendment was made to Claim 5. The Examiner did not comment on or make reference to this amendment. Applicants submit that nowhere does Elder '054 disclose, teach, or suggest this amendment to Claim 1. Therefore, since all of the limitations of Claim 1 are not taught or suggested, the obviousness rejection under Elder '054 is not proper and should be withdrawn. Applicants respectfully request reconsideration and allowance of Claims 1, 3, 5 and 10-15 over the Examiner's 35 U.S.C. § 103(a) rejection in view of Elder '054.

Double Patenting – Non-Statutory

Claims 1-5 and 10-15 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of co-pending Application No. 10/606,137. The Examiner is respectfully requested to reconsider this provisional rejection based on the present amendments. If the claims are still rejected under the judicially created doctrine of obviousness-type double patenting

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after the rejections addressed above are resolved, then the Applicants will file an appropriate Terminal Disclaimer.

Claims 11-15 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-9 of U.S. Patent No. 6,989,167. The Examiner is respectfully requested to reconsider this provisional rejection based on the present amendments. If the claims are still rejected under the judicially created doctrine of obviousness-type double patenting after the rejections addressed above are resolved, then the Applicants will file an appropriate Terminal Disclaimer.

Conclusion

The Examiner's rejection based on 35 U.S.C. § 103 and the judicially created doctrine of double patenting have all been addressed. Moreover, it is believed that all of these rejections have been overcome. Applicants respectfully request reconsideration and issuance of the present application.

Respectfully submitted,
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